THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.9250, 10881 & 15378 of 2004
&
Contempt Case No.895 of 2004 in W.P.No.10881 of 2004

COMMON ORDER :

As these writ petitions and contempt case raise common issues, they are being disposed of by this common order.

2. The petitioners in these writ petitions are members of Sri Swamy Ayyappa Cooperative Housing Society. The elections to the post of President and Managing Committee and Members of the said society were held on 16-05-1999, and after expiry of five years from the said date their term expired on 15-05-2004. Thereafter, the Deputy Registrar/Divisional Cooperative Officer, Hyderabad (West) Division, Ranga Reddy District (for short, "Deputy Registrar") through his proceeding Rc.No.2599/2003.P dt.15-05-2004 appointed seven persons as a Person In-Charge Committee (for short "PIC Committee") invoking the powers under Section 32 (7) (a) of A.P Cooperative Societies Act, 1964 (for short, 'the Act') to look after the affairs of Society for a period of three months or till elections are held and new committee assumes charge, whichever is earlier.

3. W.P.No.9250 of 2004 was filed by the petitioner therein, who was the Secretary of the Managing Committee of the said Society and whose term expired on 15-05-2004, contending that a resolution of the Managing Committee was passed requesting the District Collector (Cooperation), Ranga Reddy District, Hyderabad to conduct elections to the posts of President and Members of the Managing Committee on or before 16-05-

2004; said resolution was communicated to the District Collector (Cooperation) by letter dt.14-03-2004; without taking any steps to conduct elections to the said Society before the term of the Managing Committee expired on 16-05-2004, the Deputy Registrar had issued the orders in Rc.No.2599/2003 dt.15-05-2004 mentioned above; that the said proceeding is without jurisdiction and contrary to Section 31 (2) (b) and (c) and Section 23 (7) (a) of the Act; and that it was passed with *malafide* intention and for ulterior reasons.

4. After filing of the above writ petition, the Deputy Registrar issued proceeding No.Rc.2599/2003 dt.31-05-2004 modifying his earlier order Rc.No.2599/2003 dt.15-05-2004 appointing the Sub Divisional Cooperative Officer, Medchal as Official PIC to look after the affairs of the above Society (instead of the seven member PIC committee) for a period of three months or till the elections are held and a new committee assume charge, whichever is earlier.

5. This was challenged in W.P.No.10881 of 2004 by six members of the said Society (who were part of the seven member PIC committee constituted under proceedings Rc.No.2599/2003 dt.15.5.2004). They contended that the Managing Committee whose term had expired on 15-05-2004 had started alienating lands belonging to the Society reserved for community benefit, had misappropriated about Rs.one crore earmarked for the purpose of development and committed misappropriation and manipulation of accounts and records causing loss of about Rs.8.00 crores to the society; out of the members of the said PIC Committee constituted under proceeding Rc.No.2599/2003 dt.15.5.2004, the Sub Divisional Cooperative Officer, Medchal was only one; the PIC Committee

consisting of petitioners took charge on 17-05-2004 but the Ex-President and Secretary of the erstwhile Managing Committee did not handover the records to the PIC Committee; the petitioners, by letters dt.21-05-2004 and 19-06-2004, complained to the Deputy Registrar to take action; in the mean time, the former Secretary had filed W.P.No.9250 of 2004 referred to above; during the course of hearing of the said writ petition, the proceeding in Rc.No.2599/2003 dt.31-05-2004 was produced; this proceeding dt.31-05-2004 was a result of manipulations of erstwhile Managing Committee; the Sub Divisional Cooperative Officer, Medchal had acted as an Election Officer in 1999 when the erstwhile Managing Committee got elected and he was responsible for certain irregularities in the conduct of election when a bogus voters list prepared by erstwhile Managing Committee was utilized for the election; and there is no justification for the Deputy Registrar to modify the proceeding dt.15-05-2004 by the proceeding dt.31-05-2004.

6. On 30-06-2004 in W.P.M.P.No.13824 of 2004 in W.P.No.10881 of 2004, this Court suspended the order in Rc.No.2599/2003.P dt.31-05-2004 of the Deputy Registrar.

7. Alleging that the Deputy Registrar has not chosen to implement the above order in spite of representations filed by the petitioners therein, they filed C.C.No.895 of 2004. They contended that he subsequently issued a proceeding Rs.2599/2003.P dt.07-07-2004 addressed to petitioners in W.P.10881 of 2004 directing them (i) not to take any policy decisions or spend any amount except payment of salary to the regular employees, payment of telephone charges and other charges of the society; (ii) to admit members or allot plots only

through resolution of general body of the Society in accordance with the bye laws; and (iii) to keep the records of the Society under custody of the Sub Divisional Cooperative Officer, Medchal; that this proceeding is intended to defeat and overreach interim orders of this Court; that he cannot alter or modify the said order passed by the Court; that he colluded with the Ex-President with a view to screen the false record created by him and also their irregularities; that the order dt.07-07-2004 was issued to prevent the PIC Committee from functioning as per the interim orders of this Court, and therefore the Deputy Registrar and Sub Divisional Officer, Medchal are liable to be punished for Contempt of Court for violating the said orders of Court.

8. While the above proceedings were pending, the District Collector/District Election Authority issued proceedings Rc.15/2003-Ele dt.09-08-2004 notifying the date of election to the above Society as 03-10-2004 in exercise of the powers vested in him under Rule 22 (2) (b) of the AP Cooperative Societies Rules and appointed the Cooperative Sub Registrar, O/o Joint Registrar/District Cooperative Officer, Ranga Reddy District as Election Officer to conduct the election to the post of President and Managing Committee Members of the above Society. The Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad, issued proceeding Rc.80413/98/HSG.1 dt.16-08-2004 in exercise of the powers vested in him under Section 32 (7) (a) of the AP Cooperative Societies Act 7 of 1964 appointing the Joint Registrar of Cooperative Societies as Person-in-charge of the above Society for a period of three months to manage its affairs for a period of three months or till elections are held and elected committee assumes charge whichever is earlier.

9. These proceedings were challenged in W.P.No.15378 of 2004 by the petitioners in W.P.No.10881 of 2004. They contended that the Registrar of Cooperative Societies/Commissioner had already delegated the powers under Section 32 (7) of the Act in respect of the Society to the Deputy Registrar and the Deputy Registrar had already passed orders appointed a PIC committee consisting of the petitioners on 15-05-2004; although he modified it on 31-05-2004, the same was suspended by this Court on 30-06-2004; the petitioners had taken charge on 17-05-2004 but they have not been allowed to function till 05-07-2004 and therefore the term of three months of the PIC committee shall be calculated from that day only. They also contended that the order dt.16-08-2004 was passed without notice to the PIC committee and no reasons were given for not extending the term of PIC committee and for appointing the Joint Registrar of Cooperative Societies as the PIC Committee; the above orders cannot effect the election process which had already been commenced by appointing Dr.Satyanarayana, retired Vice-Chairman and Managing Director of AP Agro Industries Limited and a resident of the Society as Election Officer to conduct elections in exercise of powers under Section 31 (2) (c) of the Act. They prayed that both these orders be set aside.

10. This Court by order dt.19-06-2006 in all these cases appointed Sri N.Subba Rao, advocate commissioner to conduct General Body Meeting of the society as per bye-laws of the Society so that the general body, in-turn, would appoint a person as Election Officer for conducting elections of the Society as per the bye-laws.

11. It is admitted fact that that the Advocate

Commissioner was not successful in conducting a General Body Meeting as directed by this Court in its order dt.19-06-2006 on account of non-cooperation of the members of the above Society.

12. Counter affidavit was filed by the then Deputy Registrar contending that the official PIC was appointed by proceeding dt.31-05-2004 modifying earlier proceeding dt.15-05-2004 as the PIC committee consisting of the petitioners in W.P.No.10881 of 2004 failed to take over the records from the ex- Managing Committee of the Society as such delay in securing the records may result in destroying the records and may cause loss to the property of the Society. He also stated that there were allegations in complaints and counter allegations between the members of the ex- Managing Committee and the PIC Committee, that all the developmental works of Society were stopped for the past four years, and in the interest of members of Society, he is empowered to pass such orders under Section 32 (7) (a) of the Act. He also stated that the official PIC assumed charge on 01-06-2004 and took over the records from Ex-Managing Committee of the Society; that the official PIC was not a part of the Ex-Managing Committee of the Society; and that after the interim orders were passed on 30-06-2004 in W.P.M.P.No.13824 of 2004 in W.P.No.10881 of 2004, the Sub Divisional Cooperative Officer, Medchal has handed over charge on 05-07-2004 to the PIC Committee Chairman. He stated that in the meanwhile, the PIC Committee proposed to conduct general body meeting on 08-08-2004 at 10 a.m. without following proper procedure and by proceeding dt.04-08-2004 he directed them to adjourn the proposed General Body Meeting of the Society to be held on 08-08-2004 and to follow the procedure of the Act for conduct of such a meeting; that the same members of the

Society then filed A.R.C.No.4 of 2004 to stay all further actions pursuant to the resolutions passed at the General Body Meeting allegedly conducted by PIC Committee on 08-08-2004; and the Deputy Registrar, in exercise of its power under Section 62 (4) of the Act, had passed interlocutory orders staying resolutions passed in the General Body Meetings held on 08-08-2004 and 12-08-2004. He stated that the term of the PIC expired on 16-08-2004 and the question of extension of term of the PIC Committee does not arise. He also alleged that the PIC Committee misused the powers and acted unauthorisedly. He also stated that vide orders dt.16-08-2004, the Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad appointed Sri V.Prabhakar, Joint Registrar/Managing Director, AP Cooperative Union, Gunfoundry, Hyderabad as PIC of the above Society and that this official assumed charge as Person In-charge on 17-08-2004; that the District Collector/District Election Authority, Ranga Reddy District vide orders Rc.15/2003-Ele dt.09-08-2004 issued orders to conduct elections of the Society and fixed date of election as 03-10-2004 and that the Election Officer also gave a requisition to the official PIC Committee asking for connected records and list of voters as per the procedure in Rule 22 of the AP Cooperative Societies Rules.

13. The private respondents in all the above cases also filed counter affidavits.

14. The pleadings filed by the members of the former Managing Committee and the petitioners in W.P.Nos.10881 and 15378 of 2004 show that both parties have made several allegations against each other in respect of the management and administration of affairs of the Society.

15. During the pendency of these writ petitions, it is not disputed that elections to the Managing Committee of the above Society were not held and a PIC committee was appointed and was managing the affairs of the Society from time to time. Such orders were passed from time to time in G.O.Rt.No.776, Agriculture at Cooperative (Coop. VII) Department dt.08-07-2011, G.O.Rt.No.436 Agriculture in Cooperation (Coop. VII) Department dt.23-04-2012 and in G.O.Rt.No.819, Agriculture and Cooperation (Coop. VII) Department dt.07-06-2013. In the last para of these G.O.Rts., it is mentioned that the term of the official PIC Committee was extended for a further period of one year with effect from
15-05-2012 to manage the affairs of the Society.

16. Heard Sri M.V.Durga Prasad, learned counsel for the petitioners in W.P.No.10881 of 2004 and 15378 of 2004 and the learned Government Pleader for Cooperative Societies for the official respondents in these writ petitions and CC. None appears for the petitioners in W.P.No.9250 of 2004 who are respondents in the W.P.10881 of 2004 and 15378 of 2004.

17. The affairs of a Cooperative Society registered under the Act are normally to be conducted by an elected Managing Committee as per the provisions of Section 32 of the Act. But clause (a) of sub section (7) of Section 32 of the Act states :

> *"32.(7) (a) (i) If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the*

Government may, on their own and the Registrar with the previous approval of the Government, extend from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed (three years).

(ii) Notwithstanding anything contained in this Act, in the special circumstances and for the reasons to be recorded, if in the opinion of the Government, it is not possible to hold the elections to the societies or class of societies, the Government may by order extend the term of the person or the persons appointed to manage the affairs of the society or class of societies beyond three years but not exceeding (six years) (in aggregate.)"

18. A reading of the above provision shows that there cannot be a PIC Committee managing the affairs of the Society for a period in excess of three years. However in the present case from 2004 till date, the affairs of the Society are being run by a PIC Committee. This is contrary to the above provision and to the fundamental right guaranteed to the members of the Society under Article 19 (1) (c) of the Constitution of India.

19. Therefore I do not find it necessary to go into the several allegations and counter allegations made by petitioners and private respondents in these writ petitions or in the Contempt Case as no useful purpose would be served at this point of time by going into the said issues. All the parties are interested in proper management and administration of the affairs of the above Society and it would be in the interest of the members of the Society if the affairs of the Society managed by an elected managing committee.

20. Therefore the writ petitions and the CC are disposed off directing the District Collector/District Election Authority, Ranga Reddy District Hyderabad to take steps for conduct of elections to the post of President and members of the Managing Committee

of the above Society within a period of four months from the date of receipt of a copy of this order in accordance with the provisions of the Act and Rules made thereunder.

21. All the writ petitions and the Contempt Case are disposed of with the above directions. No costs.

JUSTICE M.S. RAMACHANDRA RAO

Date :04-07-2013
Kvr/-

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Date : -07-2013
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